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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/734,812	12/11/2000	Mark A. Peloquin	AUS9-2000-0529-US1	2076

7590 09/26/2003

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EXAMINER

TRUONG, LECHI

ART UNIT	PAPER NUMBER
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2126

DATE MAILED: 09/26/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/734,812

Applicant(s)

PELOQUIN ET AL.

Examiner

LeChi Truong

Art Unit

2126

-- The MAILING DATE of this communication appears n the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

1. Claims 1, 15, 17, 28, 30, 31 are rejected under the judicially created doctrine of double patenting over claims 1 or 4 or 7 of U. S. Patent No. 6,523,047 B1 (Rafanello).

Although the conflicting claims are not identical, they are not patentably distinct from each other because appropriate rationale of obviousness for any claims being rejected over the claims of the cited patent.

As to claim 1, Rafanello teaches a set of feature plug-in modules (features as plug-in modules, col 8, l n 35-67/ col 9, ln 35-67, col 10, ln 35-67), loading (incorporating, col col 8, l n 35-67/ col 9, ln 35-67, col 10, ln 35-67), selecting a first of plurality of features module (if the feature is an expander aggregator ... then feature returns, col 8, l n 35-67/ col 9, ln 35-67, col 10, ln 35-67), ordering the first plurality of feature (having a top most feature ... and a bottom most feature, col 8, l n 35-67/ col 9, ln 35-67, col 10, ln 35-67/ ordering proceeding from the bottom-most, col 9, ln 1-9), applying (applying, col 8, ln 35-68 to col 9, ln 1-10), a first volume(the logical volume, col 8, ln 35-68 to col 9, ln 1-10).

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As to claim 15, Rafanello teaches a feature plug-in modules (features as plug-in modules, col 8, ln 35-67/ col 9, ln 35-67, col 10, ln 35-67), applying (applying, col 8, ln 35-68 to col 9, ln 1-10), a volume (the logical volume, col 8, ln 35-68 to col 9, ln 1-10).

As to apparatus of claim 17, see the rejection of claim 1.

As to apparatus of claim 28, see the rejection of claim 15.

As to a computer program product of claim 30, see the rejection of claim 1.

As to a computer program product of claim 31, see the rejection of claim 15.

9.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LeChi Truong whose telephone number is (703) 305 5312. The examiner can normally be reached on 8 - 5.

Fax phone: AFTER_FINAL faxes must be signed and sent to: (703) 746-2738, OFFICIAL faxes must be signed and send to: (703) 746-7239, NON OFFICIAL faxes should not be signed, please send to: (703) 746-7240

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 305 9000.



LeChi Truong

JOHN FOLLANSBEE
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TECHNOLOGY CENTER 2100